



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD O FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for: a monetary order for damage to the rental unit, and for money owed or compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67; authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties (2 landlords and 1 tenant speaking on behalf of both tenants) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant acknowledged receipt of the landlords' Application for Dispute Resolution ("ADR") and 3 evidence packages. Landlord LS ("the landlord" speaking on behalf of both landlords) acknowledged receipt of the tenants' ADR and additional evidence submitted.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for loss as a result of this tenancy?
Are the landlords entitled to retain all or a portion of the tenants' security deposit?
Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to the return of all or a portion of their security deposit?
Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began on October 1, 2015 with a rental amount of \$1750.00 payable on the first of each month. The landlords continue to hold an \$875.00 security deposit as well as a \$437.50 pet damage deposit paid by the tenants at the outset of the tenancy. The tenants have applied for the return of their deposits and the landlords have applied to retain those deposits towards a monetary amount for damage and loss at the end of this tenancy.

Landlord LS testified that he discovered some damage after the tenants vacated the rental unit. He testified, referring to photographs he submitted for this hearing, that the side door of the residence was damaged and had to be repaired. The photograph shows damage (bending) to the bottom corner of the outer casing of the door and damage to the wood inside. The landlord did not seek a monetary amount for repairs to the unit at the end of the tenancy.

The landlord testified that, as well as discovering some damage after the tenants vacated the rental unit, he suffered financial loss as he was not able to re-rent the unit immediately. The landlords applied to recover \$1750.00. He provided undisputed sworn testimony that the tenants gave notice on November 13, 2016 and vacated the rental unit on November 30, 2016. The landlord testified that he advertised the rental unit as soon as he was given notice by the tenants.

As evidence for this hearing, the landlords submitted a copy of the online advertisement for the rental unit dated November 14, 2016. The landlords listed the rental unit at the same rental rate that the tenant had paid during her family's tenancy. The landlord provided undisputed testimony that he was able to secure a renter on December 15, 2016 however the renter was unable to move in until January 1, 2017. He testified that the new renter moved in at that time but that he lost any rental income for the month of December 2016 as a result of the tenants' short notice to end tenancy.

The tenant testified that she had to get out of the residence. She testified that she felt harassed by the landlord and, once she gave notice, she packed up and moved as quickly as possible. She testified that there were a number of reasons that led to her decision to give notice to vacate the rental unit. The tenant testified that, as indicated on the residential tenancy agreement, she was responsible to pay for electricity and other utilities. She testified that she was required to put the utilities in her name but when she attempted to do so, the utility companies requested a large deposit on the account. She testified that she wanted the landlords to keep the utilities in their name and she would

pay them however they would not agree. This was the reason for the end of tenancy that she provided in her letter to the landlord on November 13, 2016.

The tenant sought the return of her security deposit. She testified that she didn't really know how much notice she was supposed to give and that giving less than 30 days' notice was her mistake. She testified that she just really wanted the tenancy to end.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, the landlord filed for dispute resolution within 7 days of receiving the tenant's forwarding address on the day that she vacated the rental unit.

The landlord bears the burden of proving that he is entitled to retain the security deposit by proving damages or financial loss. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may order that party to pay compensation to the other party. In order to claim for loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenants. Once those factors have been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss.

I find that Landlord LS gave clear and largely undisputed testimony with respect to his financial loss. The tenant did not dispute that she failed to give a minimum of 30 days' notice. I find that the tenant did not give a reason that warrants an early end to tenancy and therefore, the tenant was required to give sufficient notice to end the tenancy. She did not do so. The tenant did not dispute that the landlord re-rented the rental unit on January 1, 2017. I find that the landlord has proven his rental loss for December 2016 in the amount of \$1750.00 as a result of the tenants providing insufficient notice to end the tenancy and thereby contravening the *Act* and the residential tenancy agreement.

The landlords sought \$1750.00: the amount of one months' rent for the month of December 2016. The landlords took steps (including advertising the rental unit immediately on the tenants' notice) to attempt to mitigate or reduce his loss. However, the undisputed testimony at this hearing is that the landlords were unable to re-rent the

unit for the month of December 2016. Therefore, I find that the landlords are entitled to recover the entire amount of \$1750.00.

While the tenants applied for the return of their security deposit, I find that the landlords are entitled to retain the tenants' security deposit towards their monetary amount in accordance with section 72(2) of the Act.

Having been successful in this application, I find further that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlord a monetary order as follows,

Item	Amount
December 2016 rental loss	\$1750.00
Less Tenants' Security Deposit	-875.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$975.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 08, 2017

Residential Tenancy Branch